IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 373 OF 2004.

Dashrath Anandrao Navghare & anr. ... Appellants.
Versus.
Smt.Nikal D'Souza and others. ... Respondents.

Shri Paresh Madkaikar for the Appellants.
Smt.Nisha A.Dabhade for the Respondent No.2.

CORAM : ABHAY S.OKA, J.
DATED : 15th June, 2006.

P.C.:

1. Heard the learned Advocate appearing for the Appellants. The Appellants are the Plaintiffs. The prayer in the suit filed by the Appellants/laintiffs was that the Respondent No.6 herein i.e. the Municipal Corporation for Greater Mumbai be ordered and directed to demolish the unauthorised construction carried out on plot No.131 by the Defendants Nos.1 to 5. By the impugned Judgment and decree, the suit filed by the Appellants has been dismissed.

2. The learned Advocate appearing for the Appellants placing reliance on the order dated 24th November 1995 passed in Writ Petition No.1997 of 1995 submitted that this Court has already directed the Respondent No.6-Municipal Corporation to remove the encroachment on plot No.131 and no action has been taken till today. He submitted that in view of the said direction issued by this Court, the suit ought to have been decreed.

3. I have considered the submissions. The prayer in the suit filed by the Appellant was for removal of encroachment and illegal construction made by the original Defendants Nos.1 to 5. Admittedly the suit was dismissed as against the Defendants Nos.1 to 5 on 8th March 1997 and no steps were taken for restoration of the suit as against the said Defendants. Even on the Plaintiffs' own showing the structure in question was constructed by the original Defendants Nos.1 to 5 and therefore, the said Defendants were necessary and proper parties to the suit. Behind the back of the said Defendants, the trial Court could not have passed a decree directing the Respondent No.6-Corporation to demolish the structure and to remove the encroachment made by the original Defendants Nos.1 to 5.

4. In view of this position, there is no merit in the Appeal and the same deserves to be dismissed. Accordingly the Appeal is dismissed with no order as to costs.

5. If any rights are accrued in favour of the Appellants on the basis of the order dated 24th November 1995 passed in Writ Petition No.1997 of 1995, the Appellants will be free to take appropriate steps in that behalf.

Judge.